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No. 82-2010

In the Supreme Court of the United States

OCTOBER TERM, 1982

BERTHOLD R. KUELLMAR and
ELIZABETH S. KUELLMAR,

Petitioners,

vs.

VILLAGE OF BROOKFIELD,
A MUNICIPAL CORPORATION,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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ARGUMENT

In their entire "Brief In Opposition To Petition For A Writ Of Certiorari", Respondent does not cite a single decision of any Federal Court. In their entire "Brief In Opposition To Petition For A Writ Of Certiorari", Respondent does not cite a single case decided under the

Fourteenth Amendment to the United States Constitution. In their entire Brief, Respondent does not attempt to distinguish, or even mention, any of the cases relied on by Petitioners.

The Petition sought a review of this case to an end determination that Petitioners' Constitutional rights to due process, as per the Fourteenth Amendment, were violated when the trial Court, upon Motion of Respondents, did a private investigation which is not on the record and thus cannot be rebutted or cross-examined. The three Illinois cases cited by Respondent have nothing to do with the Fourteenth Amendment. The two Illinois statutes cited have nothing to do with the Fourteenth Amendment.

Due process under the Fourteenth Amendment requires that state action be consistent with fundamental principles of liberty and justice, *Southern Railway Company* v. *Virginia*, 290 U.S. 190, 196 (1934). It is the province of this Court to decide whether practice of the State Court, even if in accordance with the laws of the State, was at variance with procedure constituting due process of law under the Fourteenth Amendment, *Bute* v. *Illinois*, 333 U.S. 640, 670 (1974). Thus, the Illinois decisions are irrelevant to this Court's determination. Due process minimizes unfair deprivation of property by enabling persons to contest the basis upon which a State proposes to deprive persons of protected interests, *Carey* v. *Piphus*, 435 U.S. 247, 259 (1978).

Respondents argue that "the trial record is replete with evidence supporting the ruling." (at 4) They cite no case which would distinguish or overrule this Court's holding that "To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would

have led to the same result because he had no adequate defense upon the merits", *Coe* v. *Armour Fertility Works,* 237 U.S. 413, 424 (1915), *Fuentes* v. *Shevin,* 407 U.S. 67, 87 (1972), See also *Irvin* v. *Dowd,* 366 U.S. 717, 722 (1961).

Respondents somehow assert that Petitioners have failed to specifically state how their Constitutional rights were deprived (at 4). The entire thrust of the Petition For A Writ Of Certiorari is that Petitioners were denied their right to due process of law in that their rights to have the decisions based solely on evidence produced in Court, see *Irvin* v. *Dowd,* supra, and *Murphy* v. *Florida,* 421 U.S. 794 (1975), was denied and thus they were not allowed to confront or rebut the evidence against them, see *Goldberg* v. *Kelly,* 397 U.S. 254 (1970), *Armstrong* v. *Manzo,* 380 U.S. 545 (1965).

In reaching its decision, the trial Court specifically stated:

> "[L]et the record show that as far as I'm concerned, *after viewing the premises, as to its condition today,* I believe the building and the premises are unsafe and dangerous as far as I'm concerned." (emphasis added)

The trial Court's written "Decree of Demolition" states that the decision was made "after personally viewing the premises". Thus, the view, made *dehors* the record, was used in reaching a decision. The view was made upon Motion of the Respondent.

Respondent's total lack of authority under the Constitution of the United States shows their position and the decision of the State Court to be untenable. Their assertion that the cases above are "inapplicable and easily distinguishable" (at 6) is without merit since they fail to even try to distinguish them.

CONCLUSION

As originally set out in the Petition for a Writ of Certiorari, this Court should grant the Petition to the ultimate end that the decision of the State Court be reversed. Petitioners' rights to due process, as guaranteed by the 14th and 5th Amendments, were denied in the attempt to take their property.

Respectfully submitted,

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